

AMENDED IN ASSEMBLY MAY 24, 2011
AMENDED IN ASSEMBLY MARCH 8, 2011
AMENDED IN ASSEMBLY FEBRUARY 16, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 204

Introduced by Assembly Member Halderman
(Coauthor: Assembly Member Bill Berryhill)
(Coauthor: Senator La Malfa)

January 27, 2011

An act to add *and repeal* Section 6378.2-~~to~~ of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 204, as amended, Halderman. Sales and use taxes: exemption: biomass *electrical* energy production.

The Sales and Use Tax Law imposes taxes on retailers measured by the gross receipts from the sale of tangible personal property sold at retail in this state, or on the storage, use, or other consumption in this state of tangible personal property purchased from a retailer for storage, use, or other consumption in this state. That law provides various exemptions from those taxes.

This bill would, *until January 1, 2017*, exempt from those taxes the sale of, and the storage, use, or other consumption in this state of, ~~equipment specified tangible personal property~~ purchased by a biomass energy facility, as defined, ~~for use in its biomass energy production in this state to be used primarily for the production of electrical energy from biomass materials, as defined, and to maintain and repair that property.~~

The Bradley-Burns Uniform Local Sales and Use Tax Law authorizes counties and cities to impose local sales and use taxes in conformity with the Sales and Use Tax Law, and existing law authorizes districts, as specified, to impose transactions and use taxes in accordance with the Transactions and Use Tax Law, which conforms to the Sales and Use Tax Law. Exemptions from state sales and use taxes are incorporated in these laws. ~~Section 2230 of the Revenue and Taxation Code provides that the state will reimburse counties and cities for revenue losses caused by the enactment of sales and use tax exemptions.~~

This bill would specify that this exemption does not apply to local sales and use taxes ~~or, transactions and use taxes,~~ and *state* taxes from which revenues are deposited into the Local Public Safety Fund, the Local Revenue Fund, or the Fiscal Recovery Fund.

This bill would take effect immediately as a tax levy, but its operative date would depend on its effective date.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 6378.2 is added to the Revenue and
- 2 Taxation Code, to read:
- 3 6378.2. (a) There are exempt from the taxes imposed by this
- 4 part the gross receipts from the sale of, and the storage, use, or
- 5 other consumption in this state of, ~~equipment purchased by a~~
- 6 ~~biomass energy facility for use in its biomass energy production~~
- 7 ~~in this state; both of the following:~~
- 8 (1) *Tangible personal property purchased for use by a biomass*
- 9 *energy facility to be used primarily for the production of electrical*
- 10 *energy from biomass materials.*
- 11 (2) *Tangible personal property purchased for use by a biomass*
- 12 *energy facility to be used primarily to maintain or repair any*
- 13 *property described in paragraph (1).*
- 14 (b) *The exemption provided by this section shall not apply to*
- 15 *the sale of, or the storage, use, or other consumption of, tangible*
- 16 *personal property that is used primarily in administration, general*
- 17 *management, or marketing.*
- 18 ~~(b)~~
- 19 (c) For purposes of this section, the following terms have the
- 20 following meanings:

1 ~~(1) “Agricultural wastes and residues” include, but are not~~
2 ~~limited to, animal wastes, remains and tallow, food wastes, recycled~~
3 ~~cooking oils, and pure vegetable oils.~~

4 ~~(2)~~

5 (1) “Biomass energy facility” means a facility that *primarily*
6 produces energy for distribution using biomass materials.

7 ~~(3)~~

8 (2) “Biomass materials” means any organic material not derived
9 from fossil fuels, including, but not limited to, agricultural crops,
10 agricultural wastes and residues, waste pallets, crates, dunnage,
11 manufacturing and construction wood wastes, landscape and
12 right-of-way tree trimmings, mill residues that result from milling
13 lumber, rangeland maintenance residues, biosolids, sludge derived
14 from organic matter, and wood and wood waste from timbering
15 operations.

16 ~~(4)~~

17 (3) “Landscape and right-of-way tree trimmings” include all
18 solid waste materials that result from tree or vegetation trimming
19 or removal to establish or maintain a right-of-way on public or
20 private land for the provision of public utilities, including, but not
21 limited to, natural gas, water, electricity, and telecommunications,
22 for fuel hazard reduction resulting in fire protection and prevention,
23 or for the public’s recreational use.

24 (4) “*Primarily*” means *tangible personal property used 50*
25 *percent or more of the time in an activity described in subdivision*
26 *(a).*

27 (5) “*Production of electrical energy from biomass materials*”
28 *means the activity of producing electricity from a facility that has*
29 *been certified by the State Energy Resources Conservation and*
30 *Development Commission as being renewables portfolio standard*
31 *(RPS) eligible.*

32 (6) (A) “*Tangible personal property*” includes, but is not limited
33 to, all of the following:

34 (i) *Machinery and equipment, including component parts.*

35 (ii) *All equipment or devices used or required to operate,*
36 *control, regulate, or maintain machinery, including, without*
37 *limitation, computers and electronic controllers, data processing*
38 *equipment, and computer software, together with all repair and*
39 *replacement parts, whether purchased separately or in conjunction*
40 *with a complete machine and regardless of whether the machine*

1 *or component parts are assembled by the biomass energy facility*
2 *or another party.*

3 *(B) “Tangible personal property” does not include furniture,*
4 *inventory, or equipment used to store products.*

5 ~~(e)~~

6 *(d) (1) Notwithstanding any provision of the Bradley-Burns*
7 *Uniform Local Sales and Use Tax Law (Part 1.5 (commencing*
8 *with Section 7200)) or the Transactions and Use Tax Law (Part*
9 *1.6 (commencing with Section 7251)), the exemption established*
10 *by this section shall not apply with respect to any tax levied by a*
11 *county, city, or district pursuant to, or in accordance with, either*
12 *of those laws.*

13 ~~(d)~~

14 *(2) Notwithstanding subdivision (a), the exemption provided*
15 *by this section shall not apply with respect to any tax levied*
16 *pursuant to Section 6051.2, 6051.5, 6201.2, or 6201.5, or pursuant*
17 *to Section 35 of Article XIII of the California Constitution.*

18 *(e) Notwithstanding subdivision (a), the exemption provided by*
19 *this section shall not apply to any sale or use of tangible personal*
20 *property which, within one year from the date of purchase, is*
21 *removed from California, converted from an exempt use under*
22 *subdivision (a) to some other use not qualifying for the exemption,*
23 *or used in a manner not qualifying for the exemption.*

24 *(f) If a purchaser certifies in writing to the seller that the*
25 *tangible personal property purchased without payment of the tax*
26 *will be used in a manner entitling the seller to regard the gross*
27 *receipts from the sale as exempt from the sales tax, and within one*
28 *year from the date of purchase, the purchaser (1) removes that*
29 *property outside California, (2) converts that property for use in*
30 *a manner not qualifying for the exemption, or (3) uses that property*
31 *in a manner not qualifying for the exemption, the purchaser shall*
32 *be liable for payment of sales tax, with applicable interest, as if*
33 *the purchaser were a retailer making a retail sale of the property*
34 *at the time the property is so removed, converted, or used, and the*
35 *sales price of the property to the purchaser shall be deemed the*
36 *gross receipts from that retail sale.*

37 *(g) This section shall remain in effect only until January 1, 2017,*
38 *and as of that date is repealed.*

39 SEC. 2. This act provides for a tax levy within the meaning of
40 Article IV of the Constitution and shall go into immediate effect.

- 1 However, the provisions of this act shall become operative on the
- 2 first day of the first calendar quarter commencing more than 90
- 3 days after the effective date of this act.

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